

HOUSE BILL 1904

By Clemmons

AN ACT to amend Tennessee Code Annotated, Title 50,
relative to sex discrimination.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 2, Part 2, is amended by deleting the part and substituting instead the following:

50-2-201.

This part shall be known and may be cited as the "Tennessee Pay Equality Act."

50-2-202.

As used in this part:

(1) "Commissioner" means the commissioner of labor and workforce development;

(2) "Employ" includes to suffer or permit to work;

(3) "Employee" means any individual employed by any employer within this state;

(4) "Employer" includes any person acting in the interest of any employer, directly or indirectly; and

(5) "Wage rate" means all compensation for employment, including payments in kind and amounts paid by employers for employee benefits as defined by the commissioner in rules promulgated under this part.

50-2-203.

(a) No employer shall discriminate between employees on the basis of sex by paying any employee a wage rate less than the wage rates the employer pays to any employee of the opposite sex for comparable work on jobs, the performance of which

require comparable skill, effort, and responsibility, and which are performed under similar working conditions. However, nothing in this part prohibits wage rate differentials based on:

- (1) A seniority system;
- (2) A merit system;
- (3) A system that measures earnings by quality or quantity of production;

or

(4) A bona fide factor other than sex, such as education, training, or experience, except that the bona fide factor defense applies only if the employer demonstrates that:

(A) The factor:

(i) Is not based on or derived from a sex-based differential in compensation;

(ii) Is job related with respect to the position in question;

and

(iii) Is consistent with a business necessity, except that this subdivision (a)(4)(A)(iii) does not apply if the employee demonstrates that an alternative employment practice exists that would serve the same business necessity without producing the differential and that the employer has refused to adopt the alternative practice;

(B) The factor was applied and used reasonably in light of the asserted justification; and

(C) One (1) or more factors relied upon account for the entire wage differential.

(b) An employer that is not in compliance with this section shall not reduce the wages of any employee in order to achieve compliance.

(c) An employer shall not:

- (1) Prohibit an employee from disclosing or discussing the employee's wages or the wages of another employee of the employer;
 - (2) Prohibit an employee from inquiring about the employee's wages or the wages of another employee of the employer;
 - (3) Require an employee to sign a waiver or document that denies the employee of the employee's right to disclose or discuss the employee's wages or the wages of another employee of the employer;
 - (4) Require an employee to sign a waiver or other such document that denies the employee of the employee's right to inquire about the employee's wages or the wages of another employee of the employer;
 - (5) Discharge, discipline, discriminate against, retaliate against, or otherwise penalize an employee who discloses or discusses the employee's wages or the wages of another employee of the employer; or
 - (6) Discharge, discipline, discriminate against, retaliate against, or otherwise penalize any employee who inquires about the employee's wages or the wages of another employee of the employer.
- (d) Nothing in this section requires an employer or employee to disclose the amount of wages paid to an employee.

50-2-204.

- (a) The commissioner shall administer this part and may promulgate rules pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5, as necessary or appropriate to carry out this part.
- (b) The commissioner shall endeavor to eliminate pay practices unlawful under this part by informal methods of conference, conciliation, and persuasion, and to supervise the payment of wages owing to any employee under this part.

(c)

(1) The commissioner shall develop guidelines to enable employers to evaluate job categories based on objective criteria, such as educational requirements, skill requirements, independence, working conditions, and responsibility, including decision-making responsibility and de facto supervisory responsibility.

(2) The guidelines developed under this subsection (c) must be designed to enable employers to voluntarily compare wages paid for different jobs to determine if the pay scales involved adequately and fairly reflect the educational requirements, skill requirements, independence, working conditions, and responsibility for each job with the goal of eliminating unfair pay disparities between occupations traditionally dominated by men or women.

(3) The commissioner shall make the guidelines developed under this subsection (c) available to the governor, the speaker of the senate, and the speaker of the house of representatives no later than September 1, 2018.

50-2-205.

(a)

(1) Any employer who violates § 50-2-203 shall be liable to the employee or employees affected in the amount of their unpaid wages, and in instances of an employer knowingly violating § 50-2-203(b), up to an additional equal amount of unpaid wages as liquidated damages.

(2) For the second established violation of this part in a separate judicial proceeding distinct from the first, any employer who violates § 50-2-203 shall be liable to the employee or employees affected in the amount of their unpaid

wages, and in instances of an employer knowingly violating § 50-2-203(b), up to an additional two (2) times the amount of unpaid wages as liquidated damages.

(3) For the third and subsequent established violations of this part in a separate judicial proceeding distinct from the first and second, any employer who violates § 50-2-203 shall be liable to the employee or employees affected in the amount of their unpaid wages, and in instances of an employer knowingly violating § 50-2-203(b), up to an additional three (3) times the amount of unpaid wages as liquidated damages.

(b) An action to redress a violation of § 50-2-203, including the recovery of wages, may be maintained in any court of competent jurisdiction by any one (1) or more employees. The court shall, in addition to any judgment awarded to the employee or employees, allow reasonable attorney's fees and any reasonable costs of pursuing the action to be paid by the employer and such legal and equitable relief as the court deems just and proper.

(c) No agreement by any employee to work for less than the wages to which the employee is entitled under this part bars any action under this section.

(d) At the written request of any employee claiming to have been paid less than the wage to which the employee is entitled under this part, the commissioner may bring any legal action necessary on behalf of the employee to collect such claim for unpaid wages. The commissioner is not required to pay any filing fee or other cost in connection with the action and may join various claims against the employer into one (1) cause of action.

(e) Any employer who violates § 50-2-203 shall additionally be liable for compensatory or punitive damages as may be appropriate, except that the governments

of the United States and of this state and its political subdivisions are not liable for punitive damages.

(f) Any action brought to enforce this part may be maintained as a class action as provided by the Tennessee Rules of Civil Procedure.

(g) In addition to the damages and relief imposed pursuant to this section, an employer who terminates an employee in violation of this section shall be subject to injunctive and other appropriate relief, including, but not limited to, the rehiring or reinstatement of the employee to the employee's former position with back pay.

50-2-206.

(a) A court action under this part must be commenced no later than two (2) years after the violation occurs as described in subsection (c).

(b) A court action is considered commenced:

(1) In the case of any individual claimant, on the date when the complaint is filed if the claimant is specifically named as a party plaintiff in the complaint, or if the claimant's name did not so appear, on the subsequent date on which the claimant's name is added as a party plaintiff in the action; or

(2) In the case of a class action brought to enforce this part, on the date on which the individual becomes a party plaintiff to the class action.

(c) A violation occurs when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other compensation is paid, resulting in whole or in part from such a decision or other practice.

50-2-207.

(a) It is an offense for an employer to:

(1) Violate this part; or

(2) Discharge or in any other manner discriminate against any employee

because the employee:

(A) Has made a complaint concerning this part to the employer,
the commissioner, or any other person;

(B) Has instituted or caused to be instituted any proceedings
under this part; or

(C) Has testified or is about to testify in any proceeding under this
part.

(b) A violation of subsection (a) is a Class A misdemeanor, subject to fine only.

SECTION 2. For purposes of promulgating rules, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2018, the public welfare requiring it, and shall apply to prohibited conduct occurring on or after that date.